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6
7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON

9
10 THE ESTATE OF CINDY LOU HILL, by
11 and through its personal representative,
12 Joseph A. Grube; and CYNTHIA
13 METSKER, individually,

14 Plaintiffs,
15 vs.

16 NAPHCARE, INC, an Alabama
17 corporation; HANNAH GUBITZ,
18 individually; and SPOKANE COUNTY,
19 a political subdivision of the State of
20 Washington,

21 Defendants.

22 No. 2:20-cv-00410-MKD

23 REPLY DECLARATION OF EDWIN
24 S. BUDGE IN SUPPORT OF
25 PLAINTIFFS' SPOILATION MOTION

26
27 EDWIN S. BUDGE, declare as follows:

28 1. I am over the age of 18, am competent to testify in this matter, and
29 make this declaration based on my personal knowledge.

30 2. I am one of the attorneys for the plaintiffs in this matter.

31 3. Nearly ten months ago, on March 22, 2021, counsel for Spokane
32 County produced a variety of jail surveillance videos to my office in response to
33 Plaintiffs' Requests for Production. These included a myriad of camera angles and

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1 views, such as views of a lobby area, elevators, a sally port area, a module area, and
2 other angles with little or no relevance to the instant litigation. Among the videos
3 produced on that date was a video of approximately seven hours and 26 minutes of
4 footage showing a hallway that is different from the hallway outside Cell 2W27.
5 This surveillance footage depicts a wide hallway with black file containers fastened
6 to a wall on the left side of the screen, along with a curved desk area on the right
7 side of the screen. True and correct copies of screenshots from this video are
8 attached hereto as Exhibits A.1, B.1, C.1, D.1, and E.1. At the far end of this
9 hallway, one can see a doorway that appears to lead to the hallway that contained
Ms. Hill's cell. For much of the video, even that that doorway is mostly obscured.

10 4. The *relevant* hallway, however, is the hallway directly outside Cell
11 2W27 as described in detail in Plaintiffs' December 17, 2021 Rule 37(e) Motion for
12 Default Judgment and Other Sanctions Against Defendant Spokane County for
13 Spoliation of Evidence and supporting materials. This video is of the hallway
14 immediately outside cell 2W27 where Cindy Hill was confined on her last day in the
15 jail. Of the 2W27 hallway video, Spokane County only produced two segments. One
16 such segment, approximately 32 minutes in length, runs from approximately 9:43
17 a.m. to 9:15 a.m. The other segment, approximately 2 and ½ hours in length, runs
18 from approximately 4:00 p.m. to 6:30 p.m. No video from the relevant 2W27
19 hallway has ever been produced for the approximately 6-hour-and-45-minute period
20 between 9:15 a.m. and 4:00 p.m. when all of the alleged activity critical to this case
took place.

1 5. True and correct copies of screenshots from the preserved segments of
2 2W27 Hallway Video are attached hereto as Exhibits A, B, C, D, and E. This video
3 depicts a narrow hallway with cells on the right-hand side of the screen. One such
4 cell contains the stenciled number “2W29” above the cell door in black letters. Two
5 doors beyond that is Cell 2W27.

6 6. By comparing the two videos (the 2W27 hallway video with the other
7 video referenced above), it is easy to demonstrate that the camera view from the
8 spoliated section (i.e., the 2W27 hallway video) is entirely different from, and vastly
9 superior to, the view shown by the other video the County’s lawyer incorrectly
10 claims “rectifies]” its destruction of evidence. In fact, as stated, the other video is
11 from a different hallway and does not even show Cell 2W27 or any of the adjacent
12 cells in that hallway. This is demonstrated in the series of screenshots attached
13 hereto as Exhibits A, A.1, B, B.1, C, C.1, D, D.1, E, and E.1 created by my office
from the produced video to illustrate the distinction.

14 7. Exhibit A is a screenshot from the crucial 2W27 hallway surveillance
15 camera at 9:10:22 a.m. This screenshot is part of the limited morning segment the
16 County properly preserved and produced. The 9:10:22 a.m. screenshot shows that
17 Cindy Hill has been taken in a wheelchair to Cell 2W27. The video shows Ms. Hill
18 sitting in the wheelchair with a female officer, directly outside Cell 2W27 just
19 before being put inside the cell. Exhibit A.1 is a screenshot from the exact same
20 time, taken from the other video that the County references in its response brief. The
screenshot from that video—recorded simultaneously with the 2W27 hallway

1 video—shows none of what can been seen in the 2W27 video. Ms. Hill not visible.
2 Her cell is not visible. The female officer is not visible. No adjacent cells are visible.
3 It is a different video taken of different hallway in a different location.

4 8. Exhibit B is a screenshot from the crucial 2W27 hallway surveillance
5 camera at 4:26:46 p.m. This screenshot is part of the limited afternoon segment the
6 County properly preserved and produced. The 4:26:46 p.m. screenshot shows a jail
7 officer with his hands on the outside of Cell 2W27, peering in through the glass
8 viewing window. Exhibit B.1 is a screenshot from the exact same time, taken from
9 the other video referenced by the County in its response brief. The screenshot from
10 that video—again, recorded simultaneously with the hallway video in question—
11 clearly shows that it is from a different part of the jail in a different hallway. The
12 officer is not visible. Ms. Hill's cell is not visible. No adjacent cells are visible. It is
13 a different video taken of a different hallway in a different location.

14 9. Exhibit C is a screenshot from the crucial 2W27 hallway surveillance
15 camera at 4:28:27 p.m. This screenshot is part of the limited afternoon segment the
16 County properly preserved and produced. The 4:28:27 p.m. screenshot shows a jail
17 officer with his right hand at the food slot on the outside of Cell 2W27. Exhibit C.1
18 is a screenshot from the exact same time, taken from the other video referenced by
19 the County in its response brief. The screenshot from that video—again, recorded
20 simultaneously with the hallway video in question—clearly shows that it is from a
different part of the jail in a different hallway. The officer is not visible. Ms. Hill's
cell is not visible. No adjacent cells are visible. It is a different video taken of a
different hallway in a different location.

1 10. Exhibit D is a screenshot from the crucial 2W27 hallway surveillance
2 camera at 5:25:19 p.m. This screenshot is part of the limited evening segment the
3 County properly preserved and produced. The 5:25:19 p.m. screenshot shows a jail
4 officer standing at the door outside of Cell 2W27 when Ms. Hill was first found
5 unresponsive inside. Exhibit D.1 is a screenshot from the exact same time, taken
6 from the other video referenced by the County in its response brief. The screenshot
7 from that video—again, recorded simultaneously with the hallway video in
8 question—clearly shows that it is from a different part of the jail in a different
9 hallway. The officer is not visible. Ms. Hill’s cell is not visible. No adjacent cells
are visible. It is a different video taken of a different hallway in a different location.

10 11. Exhibit E is a screenshot from the crucial 2W27 hallway surveillance
11 camera at 5:26:32 p.m. This screenshot is part of the limited evening segment the
12 County properly preserved and produced. The 5:26:32 p.m. screenshot shows a
13 group of people in the hallway outside of Cell 2W27 when Ms. Hill has just been
14 dragged from her cell into the jail hallway. Exhibit E.1 is a screenshot from the
15 exact same time, taken from the other video referenced by the County in its response
16 brief. The screenshot from that video—again, recorded simultaneously with the
17 hallway video in question—clearly shows that it is from a different part of the jail in
18 a different hallway. No people are visible. Ms. Hill’s cell is not visible. It is a
different video taken of a different hallway in a different location.

19 12. On January 4, 2022, I received a telephone call from John Justice, the
20 attorney for Spokane County. Mr. Justice stated that his office had located
surveillance video that had not been earlier produced in discovery. Mr. Justice stated

1 that he did not know why his office failed to produce the video, that it was an error
2 committed by his office, and that new video would be produced later that same day.
3 Mr. Justice sent an email shortly after the conversation, stating that he would be
4 producing a “segment [that] was somehow not included” in earlier production “that
5 depicts the hallway outside of 2W27 from approximately 9:30 a.m. until 5 p.m.” A
6 true and correct copy of this email from Mr. Justice is attached hereto as Exhibit F.
7 Later that day, the County’s lawyer did, in fact, produce jail surveillance video by
8 providing a Dropbox link in an email. I then reviewed that video, expecting to see
9 novel or different video from what the County had produced earlier in the litigation
on March 22, 2021.

10 13. Surprisingly, however, the video produced by the County’s lawyer on
11 January 4, 2022 turned out to be nothing other than a duplicate of video footage that
12 the County had produced on March 22, 2021. There is nothing new or different
13 about the video produced on January 4, 2022 compared to the video produced on
14 March 22, 2021. It is the same video footage we’ve had for nearly ten months. And
15 while it includes seven hours and 26 minutes of jail surveillance from a different
16 hallway, this surveillance is *not*, as the County’s counsel now claims, “from the
17 hallway outside cell 2W27” and it is video of a *different* hallway that appears to be
18 in the 2-West section of the jail or its vicinity. It is not the video that is the subject of
19 the instant motion. None of the cell doors that line the hallway outside of Cell 2W27
20 can be seen in this video so it is not possible to accurately tell from it whether any
person specifically visits Cell 2W27 at any time. While this other video it appears to
be in the general vicinity of the relevant hallway and shows a door in the far

1 distance that appears to lead to the 2W27 hallway, it is not (unlike the video that
2 was spoliated) video of the hallway itself.

3 14. In my declaration of December 17, 2021, I described the Rule 30(b)(6)
4 deposition of Spokane County, through its designee, Don Hooper. The County did
5 not permit the deposition to occur until July 21, 2021. The Rule 30(b)(6) deposition
6 transcript was generated by the court reporter on July 27, 2021, and the County's
7 Rule 30(b)(6) designee had 30 days after that to review and correct the transcript.
8 Moreover, the County did not permit the deposition of the Director of Spokane
9 County Detention Services until August 16, 2021. That transcript was generated on
10 August 23rd, and the deponent had until 30 days after that to review and correct the
11 transcript. Plaintiffs filed their motion less than two months after that. The motion
12 was filed well in advance of the dispositive motions deadline set by the Court (*see*
13 ECF 14) and nearly seven full months before trial.

14 I declare under penalty of perjury under the laws of the United States that the
15 foregoing statements are true and correct.

16 14 Executed this 11th day of January, 2022, at Seattle, Washington.

17 15 s/ *Edwin S. Budge*

16 Edwin S. Budge

CERTIFICATE OF SERVICE

The undersigned certifies that on the date stated below this document was filed with the Clerk of the Court for the United States District Court for the Eastern District of Washington, via the CM/ECF system, which will send notification of such filing to the following e-mail addresses:

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Dated this 11th day of January, 2022.

s/ Edwin S. Budge
Edwin S. Budge